Beck Studios, Inc. *and* **Rick Robinson.** Case 9-CA-15315

February 19, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On April 28, 1981, Administrative Law Judge Robert T. Wallace issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.

We agree with the Administrative Law Judge that Robinson's May 2 discharge violated Section 8(a)(3) of the Act. However, we decline to adopt his further findings concerning the July 21 recall of Robinson and his subsequent "constructive discharge" and find that the issues raised by these events should be resolved at the compliance stage of this proceeding.

We agree with Respondent that Robinson's reinstatement and later termination were neither alleged in the complaint as unfair labor practices nor fully litigated. The complaint alleges that Respondent discharged Robinson on May 2, 1980, in violation of Section 8(a)(3) and (1). At the hearing, when counsel for the General Counsel began questioning Robinson about events after May 2, Respondent objected on the ground that those events are not within the scope of the complaint. Counsel for the General Counsel responded that he was eliciting testimony concerning the recall and subsequent quit to show Respondent's union animus, Respondent's knowledge that Robinson was the "union instigator," and Respondent's continuing hostility towards Robinson. At no time did counsel for the General Counsel move to amend the complaint to include these events as additional violations. Respondent limited its questioning concerning these postdischarge events to the issue of its alleged knowledge of Robinson's union activities. In addition, in his brief to the Administrative Law Judge, counsel for the General Counsel did not contend that Robinson's recall was not valid or that the August 20 quit constituted a constructive discharge.

In these circumstances, we find that the recall and constructive discharge issues were not fully litigated and that the record as it stands does not support the Administrative Law Judge's findings. However, to the extent Robinson's recall was valid for purposes of tolling backpay, such matter relates to the proper remedy and its resolution is properly a matter for the compliance stage of this proceeding. We shall modify the Order accordingly.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Beck Studios, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following as paragraph 2(a):

"(a) To the extent it has not done so, offer Rick Robinson immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole, with interest, for any loss of earnings or benefits in the manner set forth in 'The Remedy.'"

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board having found, after a hearing, that we violated Federal Law by discharging an employee for supporting a union and by otherwise interfering with our employees' right to join and support a union, we notify you that:

WE WILL NOT discharge or otherwise discriminate against our employees because of their union activities.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

WE WILL NOT threaten employees with layoffs, and loss of wages and benefits for supporting United Brotherhood of Carpenters and Joiners of America, AFL–CIO, or any other union.

WE WILL NOT interrogate our employees about their support for activities on behalf of any union.

WE WILL NOT create impressions of surveillance of our employees by informing them that the Company knows of their activities on behalf of any union.

WE WILL NOT imply that union membership will be futile or (in the event we choose to agree to union-security provisions in a collective-bargaining agreement) that we would discharge employees for nonmembership in the union even if we had reason to believe that such membership was not available to them on the same terms and conditions generally available to other members, or that membership was denied or terminated for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, to the extent we have not already done so, offer full reinstatement to Rick Robinson and WE WILL make him whole for any loss of earnings he may have suffered as a result of our discrimination against him, with interest.

BECK STUDIOS, INC.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge: This case was heard at Cincinnati, Ohio, on February 2 and 3, 1981. The charge was filed by Rick Robinson on May 12, 1980, and the complaint was issued on June 19, 1980. The primary issues are whether Beck Studios, Inc. (herein called Respondent), (a) unlawfully interrogated, threatened, and otherwise discouraged employees during a union organizing drive, and (b) discriminatorily discharged Robinson in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Respondent filed an answer to the complaint in which it denied commission of the alleged unfair labor practices.[1]

Upon the entire record, and having considered the post-hearing briefs submitted by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

A. *The Evidence*

Respondent has a facility in Cincinnati, where it fabricates, repairs, and stores stage equipment (including curtains, tracks, rigging, and lighting devices) and it installs those items principally at school theaters in an area embracing Indiana, Ohio, Kentucky, and West Virginia. Ludlow is president of the Company and his wife is bookkeeper.

As of April 28, 1980, the relevant unit employees herein consisted of five men. Fisher was the most senior (12 years), with Baker being next in line (5 years). They were Respondent's primary riggers. Behind them were younger men named Hare (1 year), Jones (a co-op student employed for approximately 6 months between semesters), and the Charging Party, Robinson. While both Hare and Jones did some rigging, their primary jobs, respectively, were drafting (Hare) and light (Jones).

Robinson was hired as a part-time employee on December 17, 1979, at the suggestion of his friend Jones. He had no prior experience in stage work and his first assignment was to help Jones build shelves to accommodate a large quantity of rental curtains. Like Hare and Jones, his wage was $4 per hour. About 2 weeks later, Robinson was placed on a 40-hour workweek and was assured that his job would last at least through the spring, thereby enabling him to obtain enough money to fix his jeep.

In early February,[2] Ludlow told Jones and Robinson that he wanted them to get experience in outside rigging because he anticipated a lot of counterweight jobs in the spring and winter; and on several occasions they worked as outside helpers.

When not on outside rigging assignments all employees in the unit worked in the shop doing such things as fabricating parts and pipe, grommeting curtains, working on "carriers," and making "pockets"; and nearly all of that time was productive in the sense that it could be billed to a particular upcoming job. In addition, employees were expected to charge to "clean-up" that portion of their in-shop time not billable to any particular account. In actual practice, a thorough cleaning of the shop could be accomplished by one man in 8 hours during the course of a week, or in 2 or 3 hours if the work was performed without interruption. Slack periods most often recur each year during the lull in school theater activity after Easter pageants in mid-April to just before graduations in late May or early June. Layoffs have occurred in past years, but Respondent has provided no data as to frequency or duration.

On February 19, union authorization cards provided by Hare were signed by all employees in the unit, except Fisher, and a petition was filed with the Board for certification of United Brotherhood of Carpenters and Joiners

[1] In its answer Respondent admits that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act and meets the Board's applicable discretionary jurisdictional standard

[2] All dates cited hereafter are in 1980 unless otherwise stated

of America, AFL-CIO (a labor union within the meaning of Section 2(5) of the Act), as presentative of employees within the unit; and, thereafter, an election was scheduled for April 28. A union organizer (Guinther) was available to and was consulted by employees at all stages of the organizing campaign.

Ludlow strenuously resisted that effort in a series of five letters prepared by his attorney. These were issued to each employee between March 28 and April 21. The contents of the letters will be discussed later in this Decision. Also, on April 24, all employees in the unit, with Ludlow present, were addressed by the attorney in the plant drafting room. In essence, he reiterated matters contained in the letters.

On April 25, Hare, Jones, and Robinson initiated a meeting with Ludlow in order to make "a deal." The three employees agreed to vote against unionization in return for a $2-an-hour raise and other benefits. According to Robinson, Ludlow "kind of liked the idea . . . [but] said he couldn't really promise us anything because of the union." The latter observation, admitted by Ludlow, does not imply an offer of increased wages and benefits as alleged in the complaint. Rather, it expressly negates such intent.

The election was held on the morning of April 28. Hare served as union observer and Fisher as observer for Respondent. The employees voted for union representation 4-to-1.[3]

About an hour after the vote, Hare was in the office with Fisher and Ludlow. The latter, according to Hare, stated that as of that time there would be no more overtime for anyone other than Fisher;[4] and he named Fisher as supervisor with power to hire and fire. Hare also recounts a conversation in the office on February 19 (just after the petition for certification was filed) wherein Ludlow asked him if he had signed an authorization card. He responded "no," and Ludlow replied that he thought Fisher, Baker, and Robinson had signed. Further, Hare states that on the same day (February 19) he overheard Ludlow say in a telephone conversation that he "was fairly busy and didn't see any sign of recession."[5] Ludlow was not questioned in regard to the latter comment, but he specifically denies ever saying that there would be no more overtime or ever conversing with employees concerning authorization cards. Hare is no longer employed by Respondent, having voluntarily resigned in June. For reasons stated later, I credit Hare.

Robinson states that, prior to February 19, he regularly received 2 to 8 hours overtime per week and that he received none thereafter.[6] Respondent's records, however, indicate that he received a total 2 hours' overtime during the months of January and February, 8 hours' overtime in March, and 4 hours in April. As noted above, I find the records reliable.

Jones recalls a conversation with Ludlow while they were alone driving to a prospective jobsite sometime in April, but prior to the election. According to Jones, Ludlow said: "If the union was voted in and he had to pay everybody $8 to $10 an hour, he couldn't afford it . . . and he would have to lay someone off . . . and that someone would be Rick [Robinson]." Ludlow denies making those statements. On January 18, Jones was about to take a leave of absence to attend school and at that time he asserts that Ludlow assured him that business was good and that there would be some big jobs on his expected return to work on March 31.[7] Jones in fact returned at that time and continued working through June 13 when he quit.[8]

On April 30 and again on May 2 Ludlow approached Robinson and told him that he was being laid off temporarily effective May 2 because of lack of work, that "we liked him," and that he would be recalled when business picked up. At that time Robinson did not expect ever to be recalled.

Ludlow stated that he had no prior knowledge of any specific involvement of Robinson with the Union.[9] Also, he claims to have been unaware (prior to this hearing) of the identity of anyone signing an authorization card.

Time allocation sheets prepared by employees provide some support to Ludlow's contention that a business slump occurred in late April and extended through mid-June. Thus, Robinson logged 16 hours of cleanup time during the week ending April 18; and during a 4-week period ending June 13, the combined weekly cleanup time of Hare and Jones was 24, 53, 22, and 32 hours, respectively. Additional nonproductive shop time may have been incurred by Hare and Jones doing the 4-week period but Respondent's data is imprecise in that regard.

As noted, the charge which led to the institution of this proceeding was filed with the Board on May 12, and the complaint was isused on June 19.

In a certified letter dated July 14, Robinson was recalled to work effective July 21. He reported on that

[3] The union was certified as the bargaining representative of the employees on May 6, 1980, and shortly thereafter Hare was selected as union steward.

[4] On cross-examination, Hare acknowledged that during 2 consecutive weeks in May he received overtime of 2 and 2-1/2 hours, respectively. Further Respondent's contemporaneously maintained daily records (which I credit) show that during 2 of 17 weeks prior to the election he had overtime of 4 and 5-1/2 hours, respectively; and in each of 5 other weeks during that period he had overtime but not in excess of 2 hours in any 1 week.

[5] There is no evidence that Respondent, on or about February 19, implied that if the union were successful it would terminate its business operations, as alleged in the complaint.

[6] On cross-examination, Robinson conceded, as per an earlier affidavit, that he had been offered overtime once after February 19 but turned it down.

[7] Although I credit Jones in both instances, I find the observation made en route to the jobsite to be within the bounds of fair comment as a statement of economic fact, i.e., that if wages rose to a level he could not afford he would have to lay off his least senior employee, Robinson; and I view Ludlow's comment on January 18 (as well as the similar remark overheard by Hare on February 19) as simply voicing an optimistic expectation of prosperity in the months ahead.

[8] Jones had been expected to return to school on June 6 but he requested and was permitted an additional week to earn more money.

[9] This assertion appears to contradict a statement in an affidavit dated June 2 wherein Ludlow says, "on occasion during the union campaign, Robinson told the sewing room employees that there was a union meeting in that shop that he was going to attend. He volunteered this information to them and they volunteered it to me." On cross-examination, he explained that he learned of Robinson's attendance at union meetings only indirectly through his wife.

date and continued to be employed by Respondent until August 20.

Just prior to the end of the workday on August 19, Robinson left the shop to talk to a friend. When he returned, Mrs. Ludlow reproved him for that absence and handed him a "pink slip" signed by her husband which read as follows:

> Your transportation difficulty on Monday, August 18, as a result of which you did not show up for work must not happen again. This is a very busy period for Beck Studios and jobs we have must be finished in most cases before schools open.
>
> If you do not show up again on time because of lack of transportation, the company will hire your replacement and your employment will be terminated.

Robinson did not read the slip. Instead, he assumed it referred to the momentary absence and threw it away.

The next day there was a conversation between Ludlow and Robinson at the shop. Robinson does not remember the beginning of the conversation. He states that Ludlow "got hot all of a sudden" used, "a lot of dirty words," told me that I had lied in the written statement of the basis of the charge I filed with the Board,[10] and said I was the instigator of the union." Robinson continues, "I was getting hot at that time . . . I guess he saw I wanted to really kill him at the moment . . . he started saying, 'well, if you want to hit me' . . . and he started pushing me in the shoulder . . . so I just walked out . . . I quit . . . couldn't handle it."

Hare, Jones, and Robinson have never been replaced. As of the time of hearing, the only employees in the unit were Fisher (now supervisor) and Baker.

Conclusionary Findings

A. *The Election*

1. Written statements

The letters circulated by Respondent's president, Ludlow, prior to the election, contain the following assertions:

> (1) If the union is voted in, your wages and benefits will start at zero ($0) on a blank piece of paper [letter of March 28][11]
>
> . . . if the Union is elected, all of the wage benefits you now have could be wiped out. Each of you would be losers [letter of April 2];
>
> (2) The Union really is after only Terry [Fisher] and Vic [Baker] . . . so-if the Union doesn't want Gary [Hare], Rich [Robinson] or Floyd, [Jones], if they won't somehow qualify for union membership, the union will require that they be fired. To become a member of the Carpenters Union, you must pass a test . . . we don't think it's fair for the Carpenters Union to try to take over this Company when the majority of our employees aren't carpenters and wouldn't be acceptable as union Members." [Letter of April 16.]
>
> . . . if for any reason you are suspended by the Union, your job with the the Company is automatically terminated, and . . . You absolutely have to obey Union officers, or be tried by the Union and probably suspended, and get fired from your job. [Letter of April 17.]
>
> . . . . the company also does work under non-union jobs, especially in replacement work. If Beck Studios were to be under a union contract for all this replacement type of work at so-called "prevailing rates," it would be impossible to take this replacement work [letter of April 21].

Taken together and in the context of the letters in which they are found, these statements go beyond the bounds of legitimate expression of view, arguments, and opinion and constitute a sustained coercive effort by Respondent to inhibit its employees in the exercise of their protected right to organize for the purpose of collective bargaining.

As stated in *Taylor-Dunn Manufacturing Company*, 252 NLRB 799, 880 (1981):

> It is well-established that "bargaining from ground zero" or "bargaining from scratch" statements by employer representatives violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon what the Union can induce the employer to restore. On the other hand, such statements are not violative of the Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations. *TRW-United Greenfield Division*, 245 NLRB No. 147 (1979); *Stumpf Motor Company, Inc.*, 208 NLRB 431 (1974).

Ludlow's remarks in (1) above not only convey an impression that collective bargaining, at best, will focus on restoration of present wage levels and benefits, but also contain an explicit threat of actual financial loss ("each of you *would* be losers" (emphasis supplied); and neither in the letters nor elsewhere on this record is there any indication that those limited prospects would result from the normal give and take of collective bargaining rather than from an anticipating refusal to bargain on Respondent's part. In addition, his statements in (2) above constitute an egregious misrepresentation of the law relative to

[10] The statement accompanying the charge was handwritten by the union organizer (Guinther) and reads, in part, as follows: "[Ludlow] did discharge me for voting for collective-bargaining representation. On numerous occasions. . . [he] verbally and in writing threatened to discharge (layoff) when and if the union was voted in. The results . . . [of the election] were directly responsible for the May 2, 1980 lay off with no hope of recall, of me."

[11] This assertion is reiterated in a letter dated April 2 but is attributed therein to the United States Supreme Court. On brief Respondent makes no reference to any opinion of the Court containing such language, nor have I found any.

an employee's rights in the event an employer agrees to a union shop. The clear import of those statements is that Ludlow would be required to fire any employee who failed to qualify or was otherwise unacceptable for membership in the union when, under the proviso in Section 8(a)(3) of the Act, he could act only in the absence of reasonable ground for believing "that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or . . . that membership was denied or terminated for reasons other than the failure of the employees to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." By failing to advert to those important qualifications, the statements create an impression that Respondent "automatically" would discharge employees even if the union advanced unlawful reasons for not accepting or suspending their membership. Compare *H. A. Kuhle Company*, 205 NLRB 88, 103 (1973). Further, the assertion in (3) above clearly implies loss of work by Respondent and consequent adverse impact on employees, thereby constituting a threat of economic adversity in the event employees supported unionization. *Keister Coal Company, Inc.*, 247 NLRB 375 (1980).

2. Oral statements to Hare

In light of the strident union animus manifested in the letters and my observation of the demeanor of witnesses, including Ludlow's cautious and, at least on one occasion (see fn. 9, *supra*), less than candid testimony, I find credible: Hare's account of a conversation on the same day (February 19) that the petition for a representation election was filed wherein Ludlow asked him if had signed an authorization card and further stated that he thought Fisher, Baker, and Robinson had signed; and on April 28 wherein Ludlow, just after the election, stated that there would be no more overtime.[12] I find both conversations involved unfair labor practices. The former because it involved coercive interrogation and created an impression of surveillance and the latter because it entailed a patent threat of reprisal.

The fact that the unlawful conduct of Ludlow described under subheadings 1 and 2, above, failed of its purpose in that the employees voted for the Union by a substantial majority is immaterial. The test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on success or failure. Rather, the determinative standard is whether, as here, an employer engaged in conduct which reasonably tends to interfere with the free exercise of employee rights under the Act. *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975); *Norton Concrete Company of Longview, Inc.*, 249 NLRB 1270 (1980).

B. *Robinson's Discharge*

Respondent contends that Robinson was laid off only temporarily on May 2, and that the layoff had nothing to do with the Union. It argues that he was hired as a temporary employee and given an opportunity to work until spring, that he had the least seniority, that the layoff occurred at an anticipated slack period, and that Robinson in fact was rehired when business picked up. Finally, citing *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), it urges that, even if the layoff were prompted in part by an improper motive, that circumstance is shown on this record not to have been a substantial or dominating factor because the layoff would have occurred in any event.

My review of the record impels me to a different conclusion, to wit: that Robinson's "layoff" was a discriminatory discharge in violation of Section 8(a)(3) of the Act.

I recognize and indeed find that Respondent experienced an expected cyclical business slump at least during several weeks following Robinson's termination on May 2, but in the circumstances of this case I am not persuaded that the discharge would have occurred at that time absent Robinson's involvement with the Union.

Although Robinson was hired on a temporary basis, within 8 weeks he was given an opportunity to train as a rigger; and Ludlow viewed him as a regular at least by April 21 when, in a letter to employees, he stated: "and without a union, full year-round employment is available to each of you, because Beck Studios is able to compete for the smaller nonunion replacement type work." The fact that a slump already had begun did not deter Ludlow from making the statement. Indeed, need for maintaining rigging crews in being during slow periods appears to arise from the seasonal nature of Respondent's business.[13] Yet 9 days later, and just 2 days after the employees opted for representation by the Union in the April 28 election, Robinson, the employee perceived by Ludlow to be the "instigator of the union,"[14] was told he would be (and in fact was) "laid off" on 2 days' notice.

In those circumstances, I do not accept Respondent's asserted reason for the "lay off." I view it as entirely pretextual. See *Wright Line, supra.* Instead, I find that Robinson was discharged in retaliation and also for the purpose of conveying a chilling message to other employees who had voted for unionization. Further, I do not regard the formal recall of Robinson in July, after issuance of the complaint in this proceeding, to have been due to any motive other than a desire to obscure or mitigate the effect of the unlawful discharge; and I find that the termination following that recall was an unlawful constructive discharge arising from and constituting a continuation of the discrimination earlier exercised against Robinson. See, generally, *N.L.R.B.* v. *Fain Milling Co.*, 360 U.S., 303--304 (1959).

CONCLUSIONS OF LAW

1. By threatening employees that union representation would be futile and would result in loss of wages (in-

[12] I am advertent to the finding made earlier in this Decision that Hare in fact received some overtime after April 28, but I do not view that circumstance as inconsistent with my determination that Ludlow made the statement on April 28.

[13] In any event, Respondent did not provide any data concerning the frequency and duration of any past layoffs. Instead, the record contains only general statements that layoffs had occurred and were "normal."

[14] Ludlow did not deny making this comment (or that he pushed Robinson) during postdischarge incident recounted by Robinson.

cluding overtime) and other benefits by implying (in the event it chose to agree to union-security provisions in a collective-bargaining agreement) that it would discharge employees for nonmembership in the Union even if it had reason to believe that such membership was not available to them on the same terms and conditions generally available to other members, or that membership was denied or terminated for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership, by coercively interrogating an employee concerning support for the Union, and by creating an impression that employees' union activities were being kept under surveillance, Respondent violated Section 8(a)(1) of the Act.

2. By terminating the employment of Rick Robinson because of his support for the Union, and for the purpose also of discouraging the union activities of other employees, Respondent violated Section 8(a)(1) and (3) of the Act.

3. The unfair labor practices found herein affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent had committed certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, I find it necessary to order it to offer Rick Robinson immediate and full reinstatement with backpay computed on a quarterly basis in the manner provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, Beck Studios, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employees for supporting United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization.

(b) Threatening employees with layoff, loss of wages and benefits, or otherwise discriminating against any employees because they have engaged in protected activities.

(c) Implying (in the event it chose to agree to union-security provisions in a collective-bargaining agreement) that it would discharge employees for nonmembership in the union even if it had reason to believe that such membership was not available to them on the same terms and conditions generally available to other members, or that membership was denied or terminated for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

(d) Coercively interrogating employees about union involvement.

(e) Creating impressions of surveillance of employees' union activities.

(f) Implying that union representation will be futile.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Rick Robinson immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole, with interest, for any loss of earnings or benefits in the manner set forth in the section of the Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination or copying, all payroll records and reports, and all other records necessary for determination of the amounts owing under the terms of this Order.

(c) Post at its place of business in Cincinnati, Ohio, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent's authorized representative to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violation of the Act not specifically found.

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."